IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.03.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM

AND

THE HON'BLE MR. JUSTICE J.A.K. SAMPATHKUMAR

..

WRIT APPEAL NO.1946 of 2001

The Senior Commandant
Central Industrial Security Force
Unit Ch.P.T. Chennai 600 001. .. Appellant (Petitioner)

vs.

N. Sundaresan Nair .. Respondent

Writ Appeal filed under Clause 15 of the Letters of Patent against the order of the learned Judge Mr. Justice P.D. Dinakaran dated 04.09.2001 made in W.P.No.13715 of 2001 presented to issue a writ of certiorari calling for the records in ivde Memo No. V-13014/Estt-I/Ch P.T/NSN/2001/7006 dated 20.7.2001 on the file of the respondent and quash the same.

For appellant : Ms. Tamilarasi Babu
For respondent : No appearance

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JUDGMENT

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(Judgement of the Court was delivered by P. SATHASIVAM,J.)

The writ appeal has been filed against the order of the learned single Judge dated 04.09.2001 made in W.P.No.13715 of 2001, in and by which the learned Judge suspended the Departmental enquiry proceedings pending disposal of the criminal cases.

2. The brief facts of the case are as follows:

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The respondent herein is the petitioner in the writ petition. On 22.06.2001, he attended "A" shift duties from 05.00 hours to 13.00 hours. The Assistant Commandant (Administration) directed the Reserve Inspector (RI) to check the Control Room as some unwanted wireless communications were going on and produce the Control Room Officer before him. Accordingly, R. Mahadevan, Reserve Inspector went to the Control Room, where the petitioner and Constable Srinivasan were on duty. The Reserve Inspector found the petitioner in a state of intoxication. The Reserve Inspector immediately deputed Sub-Inspector S.K. Mandal to perform the duties of Control Room in the place of the petitioner and directed the petitioner to appear before the Assistant Commandant (Administration). At the first instance, the petitioner refused to obey the order of the Reserve Inspector but after much persuasion, he went to the Battalion (Bn) Office. Since the Assistant Commandant (Administration) was discussing an important matter with the Commandant, the Reserve Inspector asked the petitioner to wait, but, the petitioner started shouting and created nuisance. When the Assistant Commandant came back to his room, the Reserve Inspector searched for the petitioner, but he was not found, since the petitioner left the Control Room. The Assistant Commandant sent BHM, HC/GD C P Yadav and Constable M. Saravanan to inform the petitioner to appear before the Assistant Commandant. Under the pretext that there are no written orders from Assistant Commandant, he did not appear before the Assistant Commandant. Meanwhile, directions were issued to bring the petitioner before the Commandant.

3. Subsequently, departmental proceedings were initiated against the writ petitioner and criminal proceedings were also initiated separately. At that stage, he filed this writ petition praying to quash the Memorandum dated 20.07.2001, proposing to hold departmental enquiry.

4. The learned Judge, by order dated 04.09.2001, suspended the Departmental enquiry pending disposal of the criminal case and accordingly disposed of the said writ petition. Questioning the said order, the Senior Commandant, Central Industrial Security Force, Chennai has filed the above writ appeal.

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5. We heard Ms. Tamilarasi Babu, learned counsel for the appellant.

6. In spite of opportunity given, none appeared for the respondent/writ petitioner. It is the claim of the appellant/Department that the proposed Departmental enquiry is based on the charges made against the writ petitioner and the same has nothing to do with the criminal cases pending against him. In other words, according to the learned counsel for the appellant,

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conducting Departmental enquiry will not in any way affect the criminal cases against the writ petitioner and the authorities of CISF are within their limits to conduct an enquiry.

7. In the light of the said contention, we verified the charges in the Departmental proceedings as well as the criminal complaint made against the petitioner. The articles of charges and statement of imputation are available in the typed set of papers vide: pages 8 to 12. A perusal of those charges make it clear that they relate to misconduct, indiscipline and dereliction of duty as he failed to rectify himself and continued to indulge in committing offences. The statement of imputation also shows that he failed to show improvement in spite of being punished for several occasions previously and it would amount to gross indiscipline, misconduct and unbecoming of the member of a discipline force like CISF. We also verified the criminal proceedings as well as copy of the FIR.

8. On going through the criminal proceedings as well as the Departmental charges levelled against the petitioner, we are satisfied that the Departmental enquiry will not in any way hamper the investigation and the trial in criminal case. We are also satisfied that the Department need not wait till the disposal of the criminal case and the pendency of criminal case is in no way abridge or curtail the right of the Department to conduct the enquiry. As said earlier, the materials placed in respect of criminal proceedings and the departmental charges clearly show that the Departmental proceedings can be continued and need not be stayed till the criminal proceedings are over. Further, it is brought to our notice that in the criminal case filed against the writ petitioner, the offence involved is minor in nature, viz., Section 75 of the Madras City Police Act, whereas the charges levelled against him in the Departmental enquiry are serious in nature, viz., disobeying lawful order of Superiors and using abusive language against the superiors. The writ petitioner is also charged that he was in a state of intoxication while on duty. As rightly pointed out, consumption of liquor while on duty amounts to gross indiscipline. The learned Judge failed to note that the charges framed against the writ petitioner could be dealt with by the Department only. There is no valid ground to suspend the departmental proceedings till the disposal of the criminal cases. No doubt, it is settled law that if the Departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent/employee is of grave nature, which involves complicated questions of law, it would be desirable to stay the departmental proceedings till the conclusion in the criminal case is arrived at. As discussed earlier, we are satisfied that the case on hand does not attract the above said principle.

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Under these circumstances, the order of the learned Judge dated 04.09.2001 made in writ petition No.13715 of 2001 is set aside and the writ appeal is allowed. The appellant Department is free to proceed with the Departmental proceedings in accordance with law. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar

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To

The Senior Commandant
Central Industrial Security Force
Unit Ch.P.T. Chennai 600 001.

1 cc to Mr.S. Krishnaswamy, Advocate, Sr. 16227

Writ Appeal No.1946/01

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